

United States District Court
Southern District of Ohio

FILED
JAMES BONINI
CLERK

06 DEC 29 PM 12:16 *me*

UNITED STATES OF AMERICA :

v.

Mr. Roger D. Tate Sr.

(CASE)#

CR1-02-140-1

(civil)#

1:06-cv-00806

Response to plaintiff answer pursuant to the
defendant's 28 USC 2255

Petitioner hereby responds to the assistant U.S. attorney's, Benjamin G. Dusing Response to have the 2255 dismissed. To conclude, defendant's due process is being violated see *Mollane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314, 70 S. CT 652 94 LED 865 (1950) Due process requirements of the fourteenth admendment as regards notice and hearing. The due process clause requires at minimum that deprivation of life liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. No one may be deprived of liberty or property without such reasonable notice and hearing as fairness requires. In the United States response on page (4) document (84) filed 12/18/06 states that the defendant's hearing was held March 8, 2006 that defendant's sentence was reduced from 30 months imprisonment plus 3 yrs supervised release to time served plus 2 yrs supervised release Amended judgement record (77) and that I was never resentenced upon remand if false. The above defendant never waived any hearing, was never given any written notice or agreement, neither (signed) nothing stating that I the defendant, was in agreement to have any resentencing hearing waived. Constitutional law also says that due process - personal service within jurisdiction - personal service of written notice is the classic form of notice always adequate in any type of proceeding to satisfy the requirement of due process. Mr. Tate was never provided any type of written notice concerning any hearing.

Furthermore defendant's motion does make legal argument and is not based on factual assumption. The defendant never waived his appearance, but in the United States response on page 2 of 3 document 84 it clearly states that the defendant was resentenced in absentia. This can't be true at all because defendant never signed anything waiving his appearance and never authorized anyone to act in his behalf. Defendant also asks the Courts to please send all records pertaining to the hearing on March 8, 2006 and also to provide the (signed) waiver agreement to have this case heard in absentia. I am also filing for ineffective assistance of counsel for perjurying his self by telling the Honorable Court that I agreed to have a hearing in absentia.

(96 LEO 183, 342 U.S. 165 Rochin v. California)

Due process of law requires in each case an evaluation based on a disinterested inquiry pursued in the spirit of science on a balanced order of facts exactly and fairly stated on the detached consideration of conflicting claims and on a judgement not ad hoc and ~~not~~ episodic but duly mindful of reconciling the needs of continuity and of change, in any progressive society. Also under the Federal Rules of Criminal procedure ^{RULE} 43(a)(2) provides that a subpoena for attendance at a trial or hearing must issue from the court for the district in which the hearing or trial is to be held. The defendant never received anything about this hearing that was held March 8, 2006. Also Rule 43 under Federal Rules of Criminal procedure 43(a)(3) requires defendants (presence) at any sentencing. Also Rule 43(b) when not required - with defendant's written consent. The defendant hereby seeks to have this sentence vacated or to be set aside, reheard so that justice can be duly served. Defendant also asks for all records concerning the re-sentencing also to have a evidentiary hearing to have the so called signed waiver produced on record.

For the reasons outlined above Defendants motion
should be heard and granted.
Respectfully Submitted

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Certificate of Service

This is to certify that a copy of the
foregoing document has been served by
U.S. Mail upon plaintiff on December 25, 2006

Roger Tate Jr.
03651-061